

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

KAAPA ETHANOL, LLC,	)	
	)	
Plaintiff,	)	7:05CV5010
	)	
v.	)	
	)	
AFFILIATED FM INSURANCE	)	MEMORANDUM AND ORDER
COMPANY,	)	
	)	
Defendant.	)	
	)	

This matter is before the Court on plaintiff KAAPA Ethanol, L.L.C.'s ("KAAPA") and defendant Affiliated FM Insurance, Company's ("Affiliated FM") request for clarification of the Court's October 30, 2008, memorandum and order (Filing No. 229), wherein the Court adopted in part and rejected in part the magistrate judge's report and recommendation (See Filing Nos. 232, 233). Specifically, the parties seek additional clarification on the scope of damages KAAPA could recover under the policy's ensuing loss clause if a jury finds the Group II exclusion for faulty workmanship/construction applies to KAAPA's claims.

In the October 30th memorandum and order, the Court adopted the magistrate judge's construction of the ensuing loss clause (Filing No. 229 at 9-10). Further analysis of the ensuing loss clause as it related to the Group II exclusion for faulty workmanship/construction was not necessary at the time of the October 30th memorandum and order because the Court found that

genuine issues of material fact existed as to whether KAAPA's losses were caused by faulty workmanship/construction.

Both parties maintain the Court's memorandum and order was clear. Nonetheless, the parties have interpreted the memorandum and order differently and essentially ask the Court to make a finding as to which party's interpretation is correct. There is no motion pending before the Court, and the manner in which the parties have requested clarification of the memorandum and order may be construed as a request for an advisory opinion, which the Court may not issue. See *Shimitz v. Tyson Fresh Meats, Inc.*, No. 8:01CV27, 2007 WL 1658686, at \* 7 (D. Neb. June 5, 2007) (unreported) (declining request to reconsider analysis in the court's memorandum and order because the request could be viewed as an invitation to issue an advisory opinion). Thus, the Court declines to provide any further analysis of its memorandum and order. Accordingly,

IT IS ORDERED that the parties' request for clarification is denied.

DATED this 21st day of April, 2009.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court